



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CACI Field Services, Inc.

File: B-234945

Date: August 2, 1989

DIGEST

Contracting agency may properly make award to a higher-cost, higher-rated offeror where solicitation lists cost as the least important factor and it was determined that the technical merit of awardee's proposal justifies the higher cost.

DECISION

CACI Field Services, Inc. protests the award of a cost-plus-fixed-fee contract to Willbros Butler Engineering, Inc. under request for proposals (RFP) No. DACA78-88-R-0016 issued by the Corps of Engineers Middle East Africa Projects Office (Corps). CACI contends that the award to Willbros at a cost higher than that proposed by CACI is not justified since the awardee's proposal offers no technical advantage commensurate with its higher cost. CACI objects to the agency's evaluation of its technical and cost proposals alleging that the agency improperly applied unannounced evaluation factors and that the cost evaluation was arbitrary. CACI also alleges that the agency failed to perform an adequate cost realism analysis of its proposal.

We deny the protest.

On September 1, 1987, the United States government and the Arab Republic of Egypt government signed a Letter of Offer and Acceptance which established the Peace Vector III (PV III) construction program. This program requires multiple actions to insure the timely construction of facilities at Amoun, Egypt Air Base.

The Corps, the United States Air Force (Air Force) and the Egyptian Air Force (EAF) have joint responsibilities for design, engineering, procurement and construction services. Construction will be managed by a Joint Management Engineering Team (JMET) composed of Air Force, Corps and EAF

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personnel. The Corps has been tasked by the USAF to develop design drawings and specifications for the facilities to be constructed under PV III and to procure primarily mechanical and electrical materials needed for the construction. The Corps therefore must ensure that the bill of materials (BOM) be drawn up and BOM supplies procured and delivered on site to meet EAF needs. To that end, the Corps has undertaken the BOM acquisition under a two-phase program.

The subject RFP, issued in August 1988, constitutes Phase II of the PV III program. The solicitation sought proposals to obtain non-personal services to perform the following tasks in support of the Egyptian construction efforts: (1) development of BOM requirements for 81 buildings; (2) acquisition of BOM materials; (3) tracking of BOM materials; (4) operation of warehouse facilities in Egypt; (5) in-country support services for JMET personnel in Egypt; (6) job training and (7) technical representative services. Only five of the seven tasks were required to be costed and offerors were required to submit separate technical, management and cost proposals. As amended, the RFP provided for evaluation of proposals using the following evaluation factors, which were listed in descending order of importance: (1) technical approach [with listed subfactors]; (2) management [with listed subfactors]; and (3) cost.

Although not disclosed in the RFP or to the evaluators at the time they evaluated proposals, the Source Selection Official Board (SSOB) established numerical weights for the three principal evaluation factors consistent with their relative weights as stated in the solicitation. These were applied at the end of the evaluation process. The weights so assigned were technical approach 55 percent; management 35 percent; and cost 10 percent. The RFP stated that cost would be evaluated as to reasonableness and realism and that for evaluation purposes target costs and fees would be separately evaluated. The contract was to be awarded to the offeror whose proposal was judged to best serve the government's interests within the amount of funds available.

Seven firms responded to the solicitation with only three proposals--including those of Willbros and CACI--included in the competitive range. Written and oral discussions were conducted with the offerors following which revised proposals were requested and received from each of the three firms. Revised proposals were evaluated and a second competitive range limited to Willbros and CACI was established. Further technical and cost discussions were conducted at the conclusion of which best and final offers

(BAFOs) were requested and received by February 28, 1989. The technical review team evaluated the BAFOs and gave Willbros a final weighted combined technical and management score of 85.22 points and CACI 83.96 points.

CACI's final proposed cost plus fee of \$33,954,961 was 15.8 percent lower than Willbros' cost plus fee of \$40,314,640. The government estimate of total cost plus fixed fee was \$39,230,000.

Our review of the evaluation and source selection memoranda shows that throughout the process, Willbros was recommended --and eventually selected--for award despite its higher proposed cost because certain advantages were perceived in its approach.

CACI objects to the award on the ground that the agency made award on the basis of "highest total points scored."^{1/} The protester maintains this is inconsistent with the contract award clause which reserves to the government the right to make award to the offeror whose proposal best serves the government's interests within the amount of funds available. Specifically, CACI contends that the numerical difference in rated technical and management merit between the two proposals was so small that cost should have been the determinative factor in making the award. In this regard, CACI alleges that its proposal should have been viewed as best serving the government's interests since it offered the lowest cost with a "substantially equal" technical and management proposal.

Initially, we note that there is no requirement that the award be made on the basis of lowest proposed cost in a negotiated procurement; an agency may properly exercise its discretion to reject a lower-cost proposal where a technical justification exists for accepting a higher-priced proposal and the RFP does not require award to the lowest-cost, technically acceptable offeror. BDM Management Services Co., B-229287, supra. The determining element is not the

^{1/} CACI also claims that at the debriefing it was advised that management factors, rather than technical factors, were given the most weight, contrary to the evaluation scheme announced in the RFP. However, our review reveals this was not the case. In any event, any miscommunication in the debriefing is a procedural matter which has no effect on the evaluation of proposals or the validity of the award to Willbros. See, e.g., BDM Management Services Co., B-228287, Feb. 1, 1988, 88-1 CPD ¶ 93.

difference in technical merit, per se, but the contracting agency's judgment concerning the significance of that difference. DynCorp., B-232999, Feb. 14, 1989, 68 Comp. Gen. _____, 89-1 CPD ¶ 152 at 4.

Here, the Corps did not consider the two proposals to be technically equal. Rather, the Corps perceived technical differences between the two proposals which support its finding of greater technical and management merit offered by Willbros. The SSEB expressed concern that CACI's lack of construction experience; its proposed use of some Egyptian engineers rather than all American engineers; and potential problems associated with coordinating services with its subcontractors (CACI and its subcontractors had not previously worked together)^{2/} could result in a fluctuating quality of performance and cost. The evaluators also noted that CACI had downgraded the quality of its management team in its BAFO and that for the BOM takeoff effort the protester was subcontracting this task to an outside architect-engineering firm which may delay commencement of the services.

On the other hand, the SSEB found that the personnel offered by Willbros exhibited superior expertise in the areas of technical approach and management. Specifically, Willbros proposed a dedicated fulltime staff onsite for the in-country effort; in-house engineers for the BOM takeoff effort; and the use of United States engineers through its subcontractor, a large American construction firm, which although higher paid, would be more familiar with United States standards, drawings and specifications. The SSEB noted that Willbros and its subcontractor had previously worked together as a team and would provide a greater quality of expertise and management. The SSEB reasoned that Willbros' proposed approach would be higher in cost because of its use of a domestic firm and American engineers; that CACI's forecasted costs were "less firm" because of its approach which relied on extensive subcontracting and speculated that the actual cost of performance may lie somewhere between that proposed by the two firms.

^{2/} The protester alleges that its proposal was improperly downgraded in these areas because these "secret" factors were neither stated nor implied in the RFP. We think the agency has shown a reasonable correlation between these subelements, which were not listed in the RFP, but which are logically encompassed by the stated evaluation factors. See Cascade Industrial Health, B-232992, Feb. 6, 1989, 89-1 CPD ¶ 119.

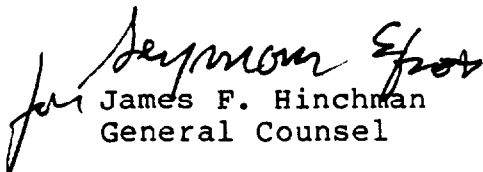
We find that CACI has failed to make a showing either that both competing proposals were essentially equal technically or that the technical and management differences between the two proposals were not very significant such that cost should have been determinative in the award selection. See, e.g., Transportation Research Corp., B-231914, Sept. 27, 1988, 88-2 CPD ¶ 290; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. As discussed above, the record clearly indicates that CACI's technical approach and management capabilities had a material impact on the source selection and on that basis we cannot conclude that the Corps' selection of Willbros was unreasonable. See VGS, Inc., B-233116, Jan. 25, 1989, 89-1 CPD ¶ 83.

Finally, CACI protests the agency's evaluation of costs, in which offerors' proposed costs were compared to the government's cost estimate and rated according to how closely they matched that estimate, according to CACI, the precision and reliability of the government's estimate are "questionable as a matter of law." In its view, use of a cost-plus-fixed-fee contract presupposes that the procuring agency is unable to reliably or precisely estimate the cost of performance. In light of this, CACI argues that reliance on the government's estimate to establish reasonableness and realism is "irrational."

The Corps did evaluate target costs (as opposed to fee) on the basis of how close the proposed cost for each task was to the Corps' own estimate for that task. Specifically, target costs which were within 15 percent of the government's estimate received the maximum score while target costs which either were higher or lower by more than 15 percent from the government's estimate received a lower score depending on the extent of the variance.

We agree with the protester that the methodology used by the Corps to evaluate cost is questionable. However, we note that cost was the least significant evaluation factor and that CACI's cost advantage, while recognized, was weighed against the superior performance which the agency concluded was offered by Willbros in its proposal. Regardless of the manner in which cost was point-scored, we think the agency arrived at a selection decision which we are not prepared to say was arbitrary.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel